

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 1831 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the Civil
Judge?

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KARSANBHAI T CHAUHAN - Petitioner(s)

Versus

PRINCIPAL OF TECHNICAL COLLEGE & 2 - Respondent(s)

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Appearance :

MR NR TANDEL for Petitioner(s) : 1,

MR DIPEN DESAI, ASST. GOVERNMENT PLEADER for Respondent(s) : 1 - 3.

M/S PATEL ADVOCATES for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 11/04/2007

ORAL JUDGMENT

1. By way of this petition under Articles 226
and 227 of the Constitution of India, the petitioner
has prayed for an appropriate order and/or direction

directing the respondents authorities to treat the services of the petitioner as regularized and make him permanent with effect from the date of Award of the Labour Court.

2. It is the case on behalf of the petitioner that he was serving as Daily Wager-Hamal and his services were terminated without following due procedure as required under the provisions of the Industrial Act, and therefore, he raised industrial dispute, which was referred to Labour Court, Ahmedabad being Reference LCA No. 1325 of 1989. The said Reference was allowed and the petitioner was reinstated to his original post as daily wager - Hamal. He approached authorities for granting benefit of Government Resolution dated 17.10.1988, by which according to the petitioner on completion of ten years as a daily wager, he was required to be made permanent and his services were required to be regularized. It is the case on behalf of the petitioner that by communication dated 10.10.1996, the petitioner was informed that he is not entitled by Government Resolution dated 17.10.1988, therefore, he cannot be made permanent. Therefore, he has

preferred present Special Civil Application for aforesaid reliefs.

3. Shri N.R.Tandel, learned Advocate appearing on behalf of the petitioner has vehemently submitted that when the petitioner is serving as daily wager since many years, his services are required to be regularized and he is to be made permanent. He has also submitted that even as per the judgment of the Hon'ble Supreme Court in the case of **Secretary, State of Karnataka & Umadevi & Ors.** reported in **2006 (4) SCC 1**, his services cannot be said to be illegal and considering the observations of the Hon'ble Supreme Court in the above case, his services are required to be regularized. Shri Tandel, learned Advocate appearing on behalf of the petitioner has relied upon recent decision of the learned Judge of this Court in the case of **Jadav Nileshkumar Mafatlal v/s. State of Gujarat** reported in **2007(1) GLH 88** in support of his above prayers.

4. On the other hand, Shri Dipen Desai, learned Assistant Government Pleader while opposing the present Special Civil Application has submitted that

as per the decision of the Full Bench of this Court in the case of **Gujarat Forest Producer's, Gatherer's & Forest Workers Union V/s. State of Gujarat** reported in **2004(2) GLR 1488**, Government Resolution dated 17.10.1988, would not be applicable to the petitioner who was serving as Hamal. It is also submitted that directions issued by the Hon'ble Supreme Court in UmaDevi's(supra) case has been further clarified and are considered by the Hon'ble Supreme Court in the recent decision in the case **Punjab Water Supply & Sewerage Board v/s. Ranjodh Singh & Ors.** reported in **(2007) 2 SCC 491**. It is submitted that the petitioner cannot claim any regularization or reinstatement pursuant to the award passed by the Labour Court as the Labour Court did not pass any award, that the petitioner should be reinstated on a permanent post. It is submitted that it is not the case on behalf of the petitioner that the petitioner was appointed after due procedure of selection and that his appointment is legal. Therefore, it is requested to dismiss the present Special Civil Application.

5. Heard the learned Advocates appearing on behalf of the respective parties.

6. It appears from the pleadings and submissions on behalf of the learned Advocate appearing on behalf of the petitioner that contention of the petitioner in support of his prayer for regularization and permanent is of two folds. One- on the basis of judgment and award passed by the Labour Court in Reference LCA No. 1325 of 1989 and second on the Government Resolution dated 17.10.1988. So far as reliance placed on Government Resolution dated 17.10.1988 is concerned, it is required to be noted that the petitioner was serving as daily wager - Hamal. As held by the Full Bench of this Court in the case of **Gujarat Forest Producer's, Gatherer's & Forest Workers Union V/s. State of Gujarat** reported in **2004(2) GLR 1488**, benefit of Government Resolution dated 17.10.1988 cannot be extended to the Daily Wager - Hamal like the petitioner. It appears that the same would be applicable only to the Daily Wagers in Roads and Buildings Department. Thus, it cannot be said that the communication dated 10.10.1996 is in any way illegal or contrary to the Government Resolution dated 17.10.1988. So far as the prayer of

the petitioner with regard to regularization on the basis of judgment and award passed by the Labour Court, Ahmedabad in Reference LCA No. 1325 of 1989 is concerned, it is required to be noted that the termination of the petitioner as Daily Wager- Hamal was found to be in breach of the provisions of the I.D.Act, therefore, the petitioner was directed to be reinstated in service and accordingly, the petitioner was reinstated as Daily Wager - Hamal i.e. the post on which he was serving. Thus on the basis of judgment and award passed by the Labour Court, the petitioner was not to be made permanent and his services were not required to be regularized.

7. It is not the case of the petitioner that the petitioner was appointed after following due procedure of selection. Even in the case of UmaDevi (*supra*), the Hon'ble Supreme Court has denied such relief of regularization, even though a employee is continued for years. In the subsequent decision in the case of Ranjodh Singh (*supra*), the Hon'ble Supreme Court has further clarified the observations made by the Hon'ble Supreme Court in the case of

UmaDevi (*supra*) in paragraph No. 15,16 and 53 by which there were some directions with regard to regularisation and the Hon'ble Supreme Court has in the case of Ranjodh Singh (*supra*) has further clarified that "what the Constitution Bench had in mind in Paras 15,16 and 53 in Umadevi(*supra*) in directing regularization was in relation to such appointments, which were irregular in nature and not illegal ones."

8. In view of the decision of the Hon'ble Supreme Court in the case of Umadevi and Ranjodh Singh (*supra*), decision of the learned Single Judge of this Court relied upon by the petitioner will not be of any assistance to the petitioner. No case is made out by the petitioner for regularization and/or permanent.

9. For the reasons stated above, the petition fails. Rule discharged. No costs.

[M.R.Shah, J.]

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